

HOUSE BILL No. 1123

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5.

Synopsis: Mobile telephone numbers. Prohibits a person from knowingly: (1) including or publishing mobile telephone number information in a telephone directory; or (2) providing or selling mobile telephone number information to another person for inclusion or publication in a directory; without the prior authorization of the mobile telecommunications service customer. Prohibits a person from knowingly: (1) including mobile telephone number information in a directory assistance data base; (2) disclosing mobile telephone number information through a directory assistance service; or (3) providing or selling mobile telephone number information to another person for those purposes; without the customer's prior authorization. Sets forth acceptable methods for obtaining a customer's prior authorization. Provides that a violation of a prohibited act is: (1) a Class B misdemeanor; and (2) a deceptive act actionable by the attorney general. Provides that a subsequent violation is a Class A misdemeanor. Provides a cause of action for: (1) damages, for a customer aggrieved by a violation; and (2) injunctive relief, for any person aggrieved by a violation.

Effective: July 1, 2007.

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January 8, 2007, read first time and referred to Committee on Interstate and International Cooperation.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1123

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-5-0.5-4, AS AMENDED BY P.L.85-2006,
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 4. (a) A person relying upon an uncured or
4 incurable deceptive act may bring an action for the damages actually
5 suffered as a consumer as a result of the deceptive act or five hundred
6 dollars (\$500), whichever is greater. The court may increase damages
7 for a willful deceptive act in an amount that does not exceed the greater
8 of:

9 (1) three (3) times the actual damages of the consumer suffering
10 the loss; or

11 (2) one thousand dollars (\$1,000).

12 Except as provided in subsection (j), the court may award reasonable
13 attorney fees to the party that prevails in an action under this
14 subsection. This subsection does not apply to a consumer transaction
15 in real property, including a claim or action involving a construction
16 defect (as defined in IC 32-27-3-1(5)) brought against a construction
17 professional (as defined in IC 32-27-3-1(4)), except for purchases of

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time shares and camping club memberships. This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, ~~or~~ IC 24-5-14, **or IC 24-5-14.7**. Actual damages awarded to a person under this section have priority over any civil penalty imposed under this chapter.

(b) Any person who is entitled to bring an action under subsection (a) on the person's own behalf against a supplier for damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member and which has been damaged by such deceptive act, subject to and under the Indiana Rules of Trial Procedure governing class actions, except as herein expressly provided. Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in a class action under this subsection, provided that such fee shall be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment, although the contingency of the fee may be considered. Any money or other property recovered in a class action under this subsection which cannot, with due diligence, be restored to consumers within one (1) year after the judgment becomes final shall be returned to the party depositing the same. This subsection does not apply to a consumer transaction in real property, except for purchases of time shares and camping club memberships. Actual damages awarded to a class have priority over any civil penalty imposed under this chapter.

(c) The attorney general may bring an action to enjoin a deceptive act. However, the attorney general may seek to enjoin patterns of incurable deceptive acts with respect to consumer transactions in real property. In addition, the court may:

- (1) issue an injunction;
- (2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers;
- (3) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action; and
- (4) provide for the appointment of a receiver.

(d) In an action under subsection (a), (b), or (c), the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any

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other party or parties to give security, or additional security, in such sum as the court shall direct to pay all costs, expenses, and disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) Any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, other than section 3(a)(19) of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five thousand dollars (\$5,000) per violation.

(h) If a court finds that a person has violated section 3(a)(19) of this chapter, the attorney general, in an action under subsection (c), may recover from the person on behalf of the state a civil penalty as follows:

(1) For a knowing or intentional violation, one thousand five hundred dollars (\$1,500).

(2) For a violation other than a knowing or intentional violation, five hundred dollars (\$500).

A civil penalty recovered under this subsection shall be deposited in the consumer protection division telephone solicitation fund established by IC 24-4.7-3-6 to be used for the administration and enforcement of section 3(a)(19) of this chapter.

(i) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

(j) An offer to cure is:

(1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier's initial response to a complaint; and

(2) only admissible as evidence in a proceeding initiated under this section to prove that a supplier is not liable for attorney's fees under subsection (k).

If the offer to cure is timely delivered by the supplier, the supplier may

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submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.

(k) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (j) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.

SECTION 2. IC 24-5-14.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 14.7. Mobile Telephone Numbers

Sec. 1. As used in this chapter, "directory assistance" means the disclosure of telephone number information by means of a live operator or an automated service.

Sec. 2. (a) As used in this chapter, "mobile telecommunications service" means commercial mobile radio service (as defined in 47 CFR 20.3).

(b) The term includes services commonly referred to as wireless, including the following:

- (1) Cellular telephone service.
- (2) Broadband personal communications service.
- (3) Covered specialized mobile radio service.
- (4) Any successor technology, including next generation or third generation service.

Sec. 3. (a) As used in this chapter, "mobile telecommunications service customer" means a person:

- (1) that contracts with a mobile telecommunications service provider for mobile telecommunications service; and
- (2) whose:

(A) name; or

(B) account with the mobile telecommunications service provider;

is assigned, or associated with, a mobile telephone number; and

(3) whose place of primary use (as defined in IC 6-2.5-12-9) is in Indiana.

(b) The term does not include:

- (1) a reseller (as defined in IC 6-8.1-15-10) of mobile telecommunications service; or
- (2) a serving carrier (as defined in IC 6-8.1-15-11).

Sec. 4. As used in this chapter, "mobile telecommunications

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1 service provider" means a telecommunications service provider
 2 that offers mobile telecommunications service to Indiana
 3 customers.

4 Sec. 5. As used in this section, "mobile telephone number
 5 information" means:

6 (1) a telephone number assigned to, or associated with:

7 (A) an identified mobile telecommunications service
 8 customer; or

9 (B) the mobile telecommunications service customer's
 10 account with the mobile telecommunications service
 11 provider; and

12 (2) any other personally identifiable information associated
 13 with the mobile telecommunications service customer,
 14 including a residential or business address for the mobile
 15 telecommunications service customer.

16 Sec. 6. (a) As used in this chapter, "telecommunications service
 17 customer" means a person:

18 (1) that contracts with a telecommunications service provider
 19 for telecommunications service (as defined in IC 8-1-2.6-0.7);
 20 and

21 (2) whose place of primary use (as defined in IC 6-2.5-12-9) is
 22 in Indiana.

23 (b) The term includes a mobile telecommunications service
 24 customer.

25 Sec. 7. (a) As used in this chapter, "telecommunications service
 26 provider" has the meaning set forth in IC 8-1-2.9-0.5.

27 (b) The term includes a mobile telecommunications service
 28 provider.

29 Sec. 8. (a) As used in this chapter, "telephone directory" means
 30 a publication that:

31 (1) is distributed by a telecommunications service provider or
 32 directory publisher to telecommunications service customers
 33 whose place of primary use (as defined in IC 6-2.5-12-9) is in
 34 a local exchange included in the publication; and

35 (2) includes telephone number information for
 36 telecommunications service customers whose place of primary
 37 use (as defined in IC 6-2.5-12-9) is in a local exchange
 38 included in the publication.

39 (b) The term includes a directory that includes listings of more
 40 than one (1) telecommunications service provider.

41 Sec. 9. (a) As used in this chapter, "telephone number
 42 information" means:

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(1) a telephone number assigned to, or associated with:

(A) an identified telecommunications service customer; or

(B) the telecommunications service customer's account with the telecommunications service provider; and

(2) any other personally identifiable information associated with the telecommunications service customer, including a residential or business address for the telecommunications service customer.

(b) The term includes mobile telephone number information.

Sec. 10. (a) A person shall not knowingly:

(1) include or publish mobile telephone number information in a telephone directory; or

(2) provide or sell mobile telephone number information to another person for inclusion or publication in a telephone directory;

without the prior authorization of the mobile telecommunications service customer with whom the mobile telephone number information is associated.

(b) A person that seeks to publish or include a customer's mobile telephone number information in a telephone directory must obtain the customer's prior authorization, as required by subsection (a), by one (1) of the following methods:

(1) Obtaining the customer's written and signed authorization.

(2) Obtaining the customer's authorization through a call placed by the customer from the mobile telephone number to be included or published in the telephone directory. A customer's call under this subdivision must connect the customer to a voice response unit or a similar mechanism that records the required information regarding the customer's consent to the publication or inclusion, including automatically recording the automatic number identification associated with the customer's mobile telephone number.

(3) Employing or contracting with an appropriately qualified and independent third party to obtain the customer's oral authorization to publish or include the customer's mobile telephone number information in the telephone directory. An authorization under this subdivision must confirm and include appropriate verification of the customer's identity.

(4) Obtaining an electronic authorization from the customer, including the customer's electronic signature (as defined in IC 26-2-8-102(8)).

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1 **Sec. 11. (a) A person shall not knowingly:**

2 (1) include mobile telephone number information in a
3 directory assistance data base;

4 (2) disclose, or authorize or allow the disclosure of, mobile
5 telephone number information through a directory assistance
6 service; or

7 (3) provide or sell mobile telephone number information to
8 another person for any purpose described in subdivision (1)
9 or (2);

10 without the prior authorization of the mobile telecommunications
11 service customer with whom the mobile telephone number
12 information is associated.

13 (b) A person that seeks to engage in any of the activities
14 described in subsection (a) must obtain the customer's prior
15 authorization, as required by subsection (a), by one (1) of the
16 methods described in section 10(b) of this chapter.

17 **Sec. 12. A person who knowingly violates this chapter commits**
18 **a Class B misdemeanor. However, the offense is a Class A**
19 **misdemeanor if the person has a previous unrelated conviction**
20 **under this chapter.**

21 **Sec. 13. A person who violates this chapter commits a deceptive**
22 **act that is:**

23 (1) actionable by the attorney general under IC 24-5-0.5-4(c);
24 and

25 (2) subject to the penalties set forth in IC 24-5-0.5.

26 An action by the attorney general for a violation of this chapter
27 may be brought in the circuit or superior court of Marion County.

28 **Sec. 14. (a) Except as provided in section 15 of this chapter, a**
29 **mobile telecommunications service customer who is aggrieved by**
30 **a violation of this chapter may bring an action for the recovery of**
31 **the mobile telecommunications service customer's actual damages,**
32 **including court costs and attorney's fees, against any person:**

33 (1) who is responsible for; or

34 (2) who knowingly participated in;

35 the violation. An action under this subsection may be brought in
36 the circuit or superior court of the customer's county of residence.

37 (b) Upon petition by any person that another person has
38 violated this chapter, the circuit or superior court of the
39 petitioner's county of residence or principal place of business in
40 Indiana may enjoin the respondent from further violations. The
41 injunctive relief available under this subsection is in addition to
42 any damages to which a mobile telecommunications service

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1 customer may be entitled under subsection (a).

2 **Sec. 15. A person does not have a cause of action against a**
3 **telecommunications service provider for a violation of this chapter**
4 **unless the violation resulted from the telecommunications service**
5 **provider's gross negligence or intentional wrongdoing.**

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